COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Appeal from Order No. 143 of 2003

Nisha Shohi … **Appellant.**

Versus

U.P.S.R.T.C. Dehradun,through
Regional Manager, Dehradun
and another. … **Respondents.**

And

(2) Appeal from Order No. 221 of 2003

U.P.S.R.T.C. through
Its Regional Manager. … **Appellant.**

Versus

Nisha Sohi & another …. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Both these appeals arise out of the same impugned judgment and award and are between the same parties, therefore, they are being disposed of by this common judgment.

Both these appeals have been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and award, dated 13-05-2003, passed by the Motor Accident Claims Tribunal/ Addl. District Judge, II F.T.C. Hardwar, ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded compensation of Rs. 6,07,000/- along with interest @ 7% per annum in favour of the claimant Nisha Shohi against the U.P.S.R.T.C. as mentioned in the impugned order. In the former case, the claimant Nisha shohi is the appellant, while in the

latter case U.P.S.R.T.C. is the appellant before this Court. Aggrieved, claimant Nisha Shohi has come in appeal with a prayer to enhance the amount of compensation mainly on the ground that the multiplier of 15 instead of 18 has been wrongly applied by the Tribunal, as the age of the deceased was 26 years at the time of death and the calculation of income tax amount, deducted by the Tribunal is erroneous, therefore, the impugned order be modified. On the other hand U.P.S.R.T.C. appellant in A.O. No. 221 of 2003 has challenged the impugned award mainly on the ground the finding of the learned Tribunal on the Issue of rash and negligent driving is erroneous, that the insurer of the scooter was a necessary party to the case and that the multiplier applied in the case is against the provisions of the Act.

Brief facts of the case are that Shrawan Kumar ***(the deceased)*** has died as a result of injuries sustained by him in a motor accident, which took place due to rash and negligent driving by the driver of bus No. 15 D-9866, owned by the U.P.S.R.T.C. on 16.9.2001 at about 12.15 p.m. near Military Hospital, Roorkee. The deceased was going on a scooter. The offending bus hit the scooter causing damage to it and injuries to the deceased. The deceased died on the spot. Report of the accident was lodged at the police station and post mortem of the dead body was conducted. The deceased was aged 26 years and was getting Rs. 7,000/- as salary from the G.R.E.F. Hence the claim petition has been filed by the widow of the decease.

The Opposite Party No.1, U.P.S.R.T.C., filed its written statement and resisted the case on the ground that in another petition No. 140 of 2001, Bhopal Singh Vs. Regional Manager, claim has been preferred by the parents of the deceased for the death of the deceased; that the driver of the bus involved in the accident was driving the vehicle in moderate speed and carefully. The accident in question occurred due to rashness and negligence on the part of the scooterist, i.e. the deceased. Neither owner and insurer of the

scooter No. UP 15 B 8360 have not been made party to the case, nor the driver of the bus has been impleaded as party in the case and the amount of compensation claimed is highly excessive.

The O.P. No.2, Vikram Singh, the father of the adopted son, the deceased, resisted the claim petition on the ground that the answering O.P. and his wife are also dependents of the deceased, but they have not been shown as dependents in the petition. It has been asserted that the deceased was not going on scooter. The accident and other details have been admitted. The O.P. has pleaded that the deceased was his adopted son, but the claimant has concealed true facts. The answering Opposite Party is also entitled to get amount of compensation.

On the pleadings of the parties, learned Tribunal has framed three Issues in the Case. Issue No. 1 related to rash and negligent driving. Issue Nos. 2 and 3 related to compensation and relief. The learned Tribunal on Issue No.1 has found that the accident in question resulting into grievous injuries and consequent death of the deceased had occurred due to rash and negligent driving by the driver of offending bus No. 15-D/9866 and it was not the out of rash and negligence on the part of the scooterist, the deceased. On Issue No.2, the learned Tribunal has held that the O.P. No.2, Vikram Singh and his wife are also entitled to the share in the amount of compensation. The learned Tribunal has come to the conclusion that the income of the deceased is proved as Rs. 5,467/- per month as shown in paper no. 25-Ka. Out of this salary, the Tribunal found that amount of Rs. 5,256/- can be taken as per month income of the deceased. The Tribunal has rounded up this figure at Rs. 5,000/- for determination loss of dependency, thereby annual loss of dependency has been calculated as 12 × 5,000 = 60,000/-. The deceased was found to be in the age group of 25-30 years. The Tribunal has applied multiplier of 18 to determine total amount of compensation towards loss of dependency. Ultimately, the Tribunal has awarded Rs. 60,000/- towards loss of dependency, Rs. 2,000/-

towards funeral expenses and sum of Rs. 5,000/- towards loss of consortium, total Rs. 6,07,000/- along with interest @ 7% per annum has been awarded as compensation for the death of the deceased. Out of this amount, 20% compensation has been ordered to be paid to the O.P. No.2 Vikram Singh and his wife.

We have heard learned counsel for the claimant Nisha Shohi, Sri Lok Pal Singh as well as learned counsel for the U.P.S.R.T.C. Sri Amar Nath Sharma and Sri Ashish Joshi and have gone through the entire material on record.

The learned counsel for the U.P.S.R.T.C. has argued before us that the accident in question was the out come of the own negligence and rashness on the part of the deceased, who was riding on the scooter, therefore, the U.P.S.R.T.C. cannot be held liable to pay the compensation. We have examined the evidence available on record on this score. On the record, True copy of the F.I.R., 21-C, True of of Post Mortem Report of the deceased, 22-C, and copy of charge-sheet filed in the criminal court by the police against the driver of the bus in question, 23-C, prima facie establish that the motor accident in question was the result of rash and negligent driving by the driver of the offending bus. Besides, from the side of the claimant, P.W.2, Susheel Kumar, has been produced. This witness has given eye witness account of the motor accident. This witness has stated on oath that he had seen the Roadways bus was driven rashly and negligently by the driver and the bus hit the scooter with the result Shrawan Kumar sustained injuries and succumbed to his injuries on the spot. From a perusal of testimony of P.W.2 is comes out that he appears to be independent witness of the occurrence. Nothing has been shown to us to show that he has been interested to favour the claimant or that he bore any grudge against the driver of the offending bus. The U.P.S.R.T.C. has also examined D.W.1, Sabha Chand, driver of Bus No. UP 15D-9866 has, however, tried to refute the factum of rash and negligent driving on the part of the driver, but this witness has not explained the filing of charge-

sheet by the police in the criminal case based on the F.I.R. lodged regarding this accident by Amarjeet. The F.I.R., post mortem report of the dead body of the deceased and the charge-sheet submitted after investigation by the police against the driver of the offending bus coupled with the evidence of eye witness, Susheel Kumar, P.W.2, clearly establish on record that the motor accident was the result of rash and negligent driving by the driver of the bus involved in the accident. After considering the entire material on record in its totality, we fail to take a different view to hold that the deceased, scooterist, was in any way responsible for the accident. The finding arrived at by the learned Tribunal on this score need not call for interference by this Court.

In view of discussion aforementioned, the contention of the learned counsel for the U.P.S.R.T.C. is not tenable. Accordingly, the finding of the learned Tribunal on the point of rash and negligent driving by the driver of the offending bus is upheld.

The learned counsel for the claimant Nisha Shohi has submitted that the Tribunal has fallen in error in applying the multiplier of 15 of determine the loss of dependency. Learned counsel further submitted that the age of the deceased Shrawan Kumar was 26 years at the time of accident, therefore, the deceased comes in the age group of 25-30 years. In the present case, the learned Tribunal ought to have applied multiplier of 18 as provided in the Second Schedule Section 163-A of the Act, therefore, the impugned judgment and award deserves to be modified. We have gone through the impugned judgment and order dated 13.5.2003. The Tribunal while assessing the loss of dependency has observed that the multipliers of Schedule are guidelines in view of the Apex Court judgment in the case of ***"State Road Transport Corporation V. Trilok Chandra [(1996) 4, S.C.C., 362].*** In this case the Hon'ble Supreme Court has observed that he Second Schedule suffers from several defects, therefore, it has been held by the Apex Court that ***"these mistakes are limited to actual calculations only and not in***

respect of other items. <u>What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16."</u> In this instant case, the Tribunal has considered the salary certificate of the deceased, which is paper no. 25-C. On the basis of this certificate, the Tribunal has deducted all necessary deductions. The Tribunal has found that after deductions the monthly income of the deceased comes to Rs. 5256/-, thereby annual income was worked out 12 × 5,256 = 63,072/- and then further, the Tribunal has deducted amount of Rs. 3,072/- towards payment of income tax, though this deduction of amount towards payment of income tax is not based on any calculation, therefore, in the present case we are of the consistent view that to arrive at the just amount of compensation multiplier of ***18*** ought to have been applied instead of ***16.*** We make it clear that there can be deviation in the choice of multiplier in view of the law laid down by the Hon'ble Apex Court in the Case of ***"United India Insurance Co. Ltd. etc. etc. Vs Patricia Jean Mahajan & Ors, etc. etc." (2002(2) Apex Court Judgments, 100 (S.C.).*** But in the peculiar facts and circumstances of the case, in our opinion, it is case fit in which multiplier of 18 ought to have been applied to work out just amount of compensation. The amount of compensation for the loss of dependency thus comes to 18 × 60,000 = Rs. 10,80,000/- instead Rs.6,00,000/-. The Tribunal has already awarded sums of Rs. 7,000/- towards funeral expenses and loss of consortium. Thus, in all, the claimant is entitled to get total compensation of ***Rs.10,87,000/-*** instead of ***Rs. 6,07,000/-*** as allowed by the Tribunal. To this extent alone, the impugned judgment and award deserves to be modified. Rest of the findings of the learned Tribunal shall remain undisturbed.

Learned counsel for the claimant has further submitted that the finding of the learned Tribunal that in the compensation amount, the O.P.-respondent Vikram Singh and his wife shall get share of 20% is erroneous, because it has not been proved on record that Smt. Vimla Shohi is alive, rather she has died long back prior to

the marriage of the claimant with the deceased. It has also been submitted that the O.P.-respondent Vikram Singh is not entitled to get compensation as he has sufficient income from agriculture. We have perused the entire record. O.P. Vikram Singh has filed his affidavit on record, 28-C, and therein, he has specifically stated that his wife Vimla Shohi is alive. He has narrated all relevant facts regarding maintenance, education, etc. of the deceased. The same points have been pleaded in the written statement filed by O.P. No. 2 Vikram singh. The claimant has admittedly not filed any replication to deny these facts. On the other hand, there are affidavits of Bhopal Singh and Smt. Omwati, wife of Bhopal Singh (31-C and 30-C) on record in which they have stated that Vikram Singh had adopted the deceased because he and his wife had no issue out of their wedlock. In these affidavits, it has nowhere mentioned that Vikram Singh was married to another woman Neelu, who has died long before. The Tribunal has already discussed this point in its judgment on Issue No.2. Learned counsel could not indicate as to how these findings are not based on evidence and are perverse. It is true that O.P.-respondent Vikram Singh has not appeared in the witness box, but the evidence already available on record, in our opinion, is sufficient to hold that Vikram Singh and his wife Vimla Shohi are also entitled to get compensation. Naturally, the the O.P. Vikram Singh, who adopted the deceased as well as his wife, who nourished Shrawan Kumar too have suffered pain, agony and loss of love due to his death during their life time, therefore, grant of 20% amount of compensation in their favour by the Tribunal appears to be proper. No illegality or infirmity has been committed by the Tribunal. In the present case, the Tribunal has rightly awarded 80% out of the total amount of compensation in favour of the claimant Nisha Shohi. The argument advanced by the learned counsel for the claimant is not tenable, so as to warrant interference by this Court on this score.

No other point was urged or argued before us.

In the result, A.O. No. 143 of 2003 filed by the claimant deserves to be partly allowed, while A.O. No. 221 of 2003 filed by the U.P.S.R.T.C. is devoid of merit and deserves dismissal.

The appeal of the claimant Nisha Shohi **(A.O. No. 143 of 2003)** is partly allowed and the judgment and order, under appeal, stand modified to the above extent. The appeal filed by the U.P.S.R.T.C. **(A.O. No. 221 of 2003)** is dismissed. No order as to costs.

The amount in deposit with this Court shall be transmitted to the Motor Accident Claim Tribunal concerned for being paid to the claimant Nisha Shohi and O.P.-respondent no.2 Vikram Singh and his wife.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP